REFEREES ASSOCIATION
OF MICHIGAN

June 26 20031

Honorable Maura D. Corrigan
Chief Justice
Michigan Supreme Court
Cadillac Place
3034 West Grand Boulevard, Suite 8-500
Detroit, MI 48202-6034

Dear Chief Justice Corrigan, and fellow Justices:

Thank you for having given me the opportunity to appear before you on June 19, 2003. In keeping with the statements made on that date on behalf of our organization, I wish to briefly set forth the basis for our positions on the issues covered that date. I did not have an opportunity to speak to MCR 3.203 and 3.210, and would like to state RAM's position to these proposed Court Rules first:

1. MCR 3.203 – RAM strongly supports the modified proposals. This rule provides for additional methods for the Friend of the Court to acquire address information to locate parties.

2. MCR 3.210 – RAM realizes that the substantial testimony presented before you by various litigators strongly supports some restricted (or unrestricted) method of accessing the testimony and results of an in camera interview with children. RAM is strongly opposed to any such mandatory recording. We are fully aware of the constitutional arguments presented

but believe, as is stated so consistently and so regularly by various Courts, that there is little that is more important than the best interest of the child. It is not the child's fault that he or she is embroiled in this custody dispute but rather most often parents who are unable or unwilling to come to some accommodation for the benefit of their child without the necessity of litigation. It is required, as part of the Child Custody Act, that the child appear before a total stranger in a rather ominous setting, express an opinion, and suffer no trauma from this event. Then it is said to this child that on top of all of this, his/her parent's are going to be told what is being said in chambers.

In weighing the interest of the child against whatever benefit goes to either parent in these insistences, clearly there is much greater harm to the child than benefit to the parent.

Certainly the Circuit Bench is not perfect, nor are all of the referees. However, most of these judicial and quasi-judicial officers know the law, understand its application and are fully aware of their rights and responsibilities pursuant to statute and case law. Rarely do these officials abuse, or even attempt to abuse, the in camera interview.

RAM believes that the harm created to the child is much more substantial than any benefit either parent might derive from access to the information given the child. Further, an explanation to the child that this will be divulged to the parents, might result in no benefit in any interview. It could possibly have such a chilling effect that this factor of the Child Custody Act would no longer be feasible.

If the Court believes that recording interviews is constitutionally necessary, then RAM suggests, that both judicially and legislatively the best interest factors be reviewed for consideration of eliminating the child's preference so children will no longer have to face this difficulty.

The other issue RAM wishes to address is the proposed Michigan Support Formula Manual. RAM has no difficulty with the adjusted numbers and the resulting amount of child support that might be modified from prior formulas. RAM's membership, however, cannot understand why major adjustments have been made in so many different provisions when are respective Friends of the Court have installed so many procedures that are working so well under the current system. The consist theme at the Public Hearing on June 19, 2003, was "if it ain't broke, don't fix it". RAM wholeheartedly supports this position.

1. 2.05 (b) – RAM opposes the inclusion of dependent benefits received by the children as a result of the payers disability being included in the payer's gross income. Without the dependents, this money would not go to the payer, but would not be paid at all. It is an extra benefit of receiving Social Security retirement, survivors or disability insurance. Child support should only be determined on the actual income of the payer and payee. Dependent benefits should not be included in the payee's income either. It is RAM's position that 2.05 (b) be stricken and that, if anything, a statement be placed in the formula providing that dependency benefits are not to be included in either parties' income.

2. 2.11 (a) – RAM supports the proposed Michigan Child Support Formula Manuel with regard to child support being determined first.

3. 3.05 – Shared Economic Responsibility – RAM does not support the concept of Shared Economic Responsibility. RAM, however, is a very pragmatic organization. It is understood that SER is probably here to stay. Therefore, RAM suggests, in the probably alternative, that the number of overnights required for attaining Shared Economic Responsibility be no less than 105 overnights per year.

   The proposed Formula does not give the payer a substantial economic benefit between 52 and 100 overnights, but would create substantially more work for the various Friend of the Courts, referee's and judges around the state in determining child support. For each case that an investigation is required the Court agency investigating child support would be required to determine a regular child support figure, then determine the exact amount of overnights and do a second recommendation based on Shared Economic Responsibility, and then made a determination as to which, in the best interest of the child, should be applied. This could, effectively, double the investigative work that the Friend of the Courts. RAM is not attempting to be alarmist, but as a practical matter parties without representation are going to need this extra attention and this advice, and varied recommendations will certainly create more substantial arguments between them. Where parties are represented by counsel, recommendations are issued because counsel cannot agree in the first place, and this is just another trap for continued bickering.

The average parenting time agreement is somewhere between 85 overnights and 105 overnights per year for the non-custodial parent. The intent of Shared Economic Responsibility is to reward those non-custodial parents who have the children a **greater** number of overnights. That is why RAM believes that a starting point of 105 overnights per year would be reasonable.

4. 3.06 Shared Economic Adjustments – RAM fully supports the introductory paragraph at 306 (A). There are always going to be times during the year when the visiting party cannot visit or the custodial party cedes extra overnights. RAM believes a 21 day threshold will be an excellent deterrent to bickering over minor overnight changes.

However, the Formula, in giving these protections against bickering, then includes 3.06 (b) and (c) which provide that with the change of one overnight the non-custodial parent can request a rebate on this child support, or the custodial parent can request payment of extra sums because the night was not exercised. It is interesting to note that the formula for each is different.

3.06 (b) and 3.06 (c) created a forum for every parent in the State of Michigan who continues to carry antagonism toward the child's other parent or who believes they are being treated unfairly to come to court and argue and reargue about the number of overnights being spent and how it is being financially unjust to them.

Once again, the effect of these two paragraphs, RAM believes, will be to quell any desire parties may have to work well together for fear of creating arguments over financial reimbursement. This benefits neither the children nor the parties. Just as important is that the members of our organization will have to hear all of these petitions, complaints and requests for adjustments. We will be forced to determine the number of overnights, hear the arguments on how many extra or less overnights each party had the child and expend value time that could be spent on more necessary issues.

Of all of the provisions in the proposed Formula, 306 (b) and (c) and the changes in health care (3.08) are clearly the most inappropriate and ill-considered changes.

5. 3.08 Health care and medical support – The current state of the law is that either or both parents are obligated to provide for medical insurance for the minor children. If there is any ability to obtain medical insurance by either party this is never really a problem. If not, it would be difficult under any circumstances.

With regard to reimbursement for uninsured medical expenses paid by one party or the other, the current state of the law is that the parents are assigned percentages based on their respective incomes and they are obligated to pay that percentage toward any uninsured medical expenses. The parent who incurs the medical expense advises the other party, and if repayment is not made the bill is submitted to the local Friend of the Court which has procedures in place to

enforce. The current medical reimbursement program is based on a dollar spent to be absorbed proportionally by the parties. There does not have to be any assumption of what the probable annual costs is, or what the difference between the ordinary health care expense is, or any determination of extra-ordinary health expense.

The proposed Formula puts the burden on the payer to pay $280.00 a year whether the child incurs the same or not. If the payer does not pay, the payee still does not receive reimbursement for the medical expenses incurred because it is assumed that part of the child support arrearage (which may or may not be collected) is payment for part of that medical. Unless, of course, failure to pay the monthly amount would lower the annual expenses the payee would have to meet to request reimbursement for medical bills paid. This would necessitate additional findings by the Court.

RAM also believes it is unreasonable to require the custodial parent to start saving every single receipt they have (drug store receipts, doctor's offices co-pays, grocery store receipts for bandages, etc. etc.) for an entire year and then submit them to their local Friend of the Court for enforcement. This puts an undue burden on both the payee and the investigators at the various Friends of the Court. It also creates a greater area for contesting the appropriateness of expenses and, in any event, will necessitate proving expenses for the year. The proposed Formula does not benefit payee or payer.

Additionally, there really is no clean definition of what an ordinary health expense or an extra-ordinary health care

expense is, and those issues will still be litigated on a regular basis, just like they are now.

This is truly a situation in which there is a good, successful and reasonable system in place that satisfies the abilities of the governmental units enforcing it and benefits the parties and is clearly a reasonable method of expense reimbursement. The proposal under MCR 3.08 is none of the above.

RAM appreciates having been allowed to submit this letter to the Justices and, in closing, stresses its opposition to 3.210 and its strong opposition to the following provisions of the Child Support Formula: 3.06 (b) and (c) and 3.08. RAM would welcome any further opportunity to discuss with the Justices the additional burdens this would place of the court system and the lack of benefit that would accrue to the litigants, should any of the Justices so desire.

Respectfully,

Mark D. Sherbow
Immediate Past President

MS/lkp